S. HRG. 100-192

REAUTHORIZATION OF THE STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT OF 1981

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FEDERALISM, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1530

TO EXTEND FOR FIVE YEARS THE AUTHORIZATION GRANTED UNDER THE STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT OF 1981

JULY 30, 1987

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REAUTHORIZATION OF THE STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT OF 1981

THURSDAY, JULY 30, 1987

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY,
FEDERALISM, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Jim Sasser, Chairman of the Subcommittee, presiding.

Present: Senator Sasser.

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Good morning. The Subcommittee will come to order.

This morning the Subcommittee on Government Efficiency, Federalism, and the District of Columbia will hear testimony on the reauthorization of the State and Local Government Cost Estimate Act of 1981.

I first chaired hearings on this subject in 1980 when I introduced legislation to provide for State and local government fiscal notes. This legislation, I am happy to say, was subsequently enacted into law in 1981 and this successful program has been in place for 5 years now.

Recently I was joined by my colleagues, Senator Heinz of Pennsylvania and Senator Levin of Michigan, in introducing S. 1530, which would reauthorize the program for another 5 years beginning October 1.

One of the key questions that the Congress must keep in mind before enacting legislation is this: How much will it cost Government to do what we propose? Answering this question is the fundamental purpose of the fiscal note program.

I well remember one of the Senators from New York relating to me an incident where there was a requirement in one of our statutes that the subway system in New York be modified to make accommodations for handicapped riders in order to qualify for certain mass transit funds, and after looking into it they found that the modification of the system would cost more than they would gain by availing of the mass transit funds. So I think that gives you some idea of how important it is to know what a program costs when the Congress proposes it.

Now, we did not start requiring fiscal notes or estimates of the cost impact on the Federal Government until the Congressional Budget Act of 1974 was enacted. However, Federal legislation often imposes compliance costs on State and local governments as well, as I have indicated by the story of the New York subway system.

That is why we called upon the Congressional Budget Office in 1981 to expand its fiscal note preparation to assess the impact of Federal legislation on State and local governments. Those notes have helped the Congress to determine whether the benefits of a given program are justified by its cost, and if so how those costs are apportioned among all levels of government.

The Congressional Budget Office is now required to prepare a State and local fiscal note on legislation, except, of course, for a tax or appropriations bill, after the bill is reported from full Committee, and then only where the estimated State or local impact is over $200 million.

We are very pleased to hear, though, that the CBO has found it possible to prepare notes on State and local impact on all nontax or appropriations bills reported from committee, not just those that reach the $200 million figure. Out of about 2,300 such notes prepared since 1982, CBO has identified significant State and local impact in over 200 bills.

In the past several years the fiscal note program has been of critical importance to States and localities, I think on several occasions. When the recent immigration reform bill was before the Congress, CBO's State and local fiscal note was a primary factor behind significant provisions in the bill setting forth reimbursement of local governments of their costs. Those costs are estimated to run several billion dollars over the next 5 years.

In another case, the fiscal note provision affected legislation implementing the *Garcia* decision, applying provisions of the Federal Fair Labor Standards Act to State and local governments. When legislation was introduced in the House to amend the Fair Labor Standards Act, one of the most significant questions to answer was, how much would the Court's decision cost State and local governments.

Cost estimates were in sharp conflict. Some local governments predicted a substantial impact, and some employee groups minimized the potential costs. Yet, even before the amendments were introduced, the committee staffs turned to the Congressional Budget Office [CBO] for help in preparing an impartial cost estimate. CBO prepared such an estimate which eventually helped the Congress to enact legislation that did not impose burdensome costs on State and local governments.

Well, now as we prepare to reauthorize the State and local fiscal note program, we must review how the process has worked the first 5 years. I expect we will hear some ideas for making the program work even better and perhaps some very specific suggestions for increasing the awareness of legislators and interested groups about the role of fiscal notes in the legislative process.

Now, I believe this program is a worthwhile one. It provides us with a fiscal road map as we consider Federal legislation affecting State and local governments. Without this road map our legislative

process would be diminished. Reauthorization of this program helps to create a more cooperative system of federalism.

Right now I would like to welcome our first witness, Mr. James L. Blum, the Assistant Director of the Congressional Budget Office.

Mr. Blum, it is a pleasure to have you with us here this morning and we look forward to hearing your observations. You may proceed, Mr. Blum.

TESTIMONY OF JAMES L. BLUM, ASSISTANT DIRECTOR, BUDGET ANALYSIS DIVISION, CONGRESSIONAL BUDGET OFFICE

Mr. BLUM. Thank you, Mr. Chairman.

I am certainly pleased to be here this morning, and I would like to echo your opening comments on the usefulness of the State and Local Government Cost Estimate Act and we certainly welcome your efforts to extend our authorization for another 5 years.

With your permission, Mr. Chairman, I would like to summarize my formal statement, [1] in the interest of expediting the session this morning.

Table 1 on the bottom of page 2 of my statement summarizes the CBO's experience with the State and local cost estimates during the past 4 years—that is, during the 98th and 99th Congress. And as you mentioned in your statement, we have prepared over 2,300 such fiscal notes, as they are more commonly referred to at the State level, during this time. Only 10 percent, however, of those notes showed any impact on State and local governments, which is actually less than we anticipated more than 5 years ago when the act was first put into effect.

We have integrated the preparation of the State and local fiscal notes into our Federal cost estimating work. We view it as an extension of our regular bill costing responsibilities and not as a separate activity. Our intent is to provide the Congress with a ball park figure of the potential impact on State and local budgets.

Sometimes this cost is presented in terms of a range of possible impacts and sometimes we are unable to estimate even a range because of the uncertainties involved in implementing the legislation.

As with our Federal cost estimates, each bill that we look at presents a different analytical problem to solve and usually we have very little time in which to complete our estimates. Therefore, we do not have a standard cost methodology or a single way of doing things but rather we must tailor our analysis to the specifics of each piece of legislation.

As you noted in your statement, Mr. Chairman, we have from the very beginning decided to ignore the threshold requirement in terms of preparing these estimates because even to reach the judgment as to whether or not there is significant impact, we would have to do certain analytical work which we felt was useful to provide to the Congress in any event.

In contrast to our Federal cost estimates, the CBO State/local fiscal notes do not appear to have had much impact on the legislative process. In fact, we have not experienced much interest in them. In a few instances, however—and particular the two that

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[1] See p. 18.

you noted in your opening statement—these fiscal notes have played a key role in the shaping of Federal legislation.

We also have prepared these notes at earlier stages in the legislative process than at the reported stage. Certainly, the example of preparing some cost estimates on the impact of the Supreme Court decision in the *Garcia* case with respect to the Fair Labor Standards Act is a case in point.

Nonetheless, we believe, with you, that the State/local fiscal notes are a useful contribution to the legislative process and we strongly support extending that authorization for another 5 years, or even indefinitely, if that were desired by the Congress.

Now, as regards possible improvements in the fiscal note process, you did ask in your letter inviting us to testify this morning to comment on some possible improvements. I think in general we believe the legislation is fine as it is at the moment and that probably the step that ought to be taken, from our point of view, in terms of eliciting more interest or more activity in this area, it might be best taken by the State/local interest groups themselves.

I guess what I have in mind here, as an example, perhaps if they could, using their own resources, establish a central clearinghouse, for example, for purposes of tracking legislation here in the Congress that might have a State/local cost impact; indeed, in terms of tracking various rules and regulations that come out of Federal agencies that may even have larger impacts on the budgets of State and local government, I think would be very useful to help organize their own efforts to focus attention on these costs.

I think if there were such a force that existed outside the Congress, for example, for focusing interest on these costs, that our work would become even more important and we would receive, in fact, more requests from committees to do this kind of analysis at earlier stages or even for floor amendments or the like.

But at the moment we think the act is serving its purpose. We are preparing these estimates. Where the costs are significant we are pointing them out, so I think the information is being provided.

Senator SASSER. Thank you very much, Mr. Blum.

It does appear that there has to be considerable information and data available to make the fiscal note program work at peak efficiency.

My question to you is, is the executive branch cooperating to supply CBO with the information it needs for preparing the various types of fiscal notes?

Mr. BLUM. Yes, it is. We frequently turn to Federal agencies for such information. A lot of the bills that the Congress looks at each year are amendments to existing legislation or changes to existing programs, and therefore we frequently can find in the Federal agencies people who are knowledgeable about the program, knowledgeable about what might be happening at the State and local area, or at least can tell us where to go to get information as to the cost.

We find that, I think in general, that the people in the Federal agencies are most cooperative.

Senator SASSER. It has been suggested that CBO should prepare an annual report on their fiscal note program. What are your views on this suggestion?

Mr. BLUM. Well, this certainly would be possible. It would require, obviously, some additional work on our part to keep track of the various bills that have had a cost impact, but as we see from the statistics, that does not tend to be a very large number each year, so that this is something that could be done.

Now, as far as adding them all up to get a bottom-line figure, that may not be possible, because as I have indicated in my statement, in many instances in our attempt to provide the Congress with a ball park figure, that figure may turn out to be a range, as in the case of the Fair Labor Standards Act amendments, the impact of the *Garcia* decision, for example, we were able to at least define the ball park as being somewhere between half a billion and $1½ billion.

But to add all of this up then to reach a total might not be possible, but certainly in terms of listing what we had done and what the Congress has done would be possible.

Senator SASSER. On some occasions the Congressional Budget Office actually has prepared State and local fiscal notes earlier in the legislative process than the committee report stage; that is correct, is it not?

Mr. BLUM. That is correct.

Senator SASSER. Now, that happened when the House was considering how to amend the Fair Labor Standards Act. Would it be all that difficult for CBO to do these notes earlier in the process on a regular basis? My thought is that this would give your office more time to gather data.

Mr. BLUM. Well, Mr. Chairman, I guess I would respond by observing that where these costs are likely to be significant or at issue in terms of the legislation, we find, I think, that the Committees will turn to us to ask us to do this analysis, and we will respond. I think I would prefer, instead of requiring us to review, for example, all the actions at the Subcommittee level or at an earlier stage—which would increase our workload considerably—that we can respond when there is an interest, where there is a potential significant cost, and where that request is made.

I think, in that sense, letting the marketplace work would be very effective. Otherwise, I am afraid that we would expend considerable time and energy for a payoff that is not very great in terms of coming down to focus on those bills where it does seem to make a difference.

It is also in that vein that I think Committees would be interested in having such information if they are being pressured, lobbied, if you will, from the various State/local interest groups who are concerned. But our experience is, if there is not an interest on behalf of the Committee or the Congress or if there is not pressure being brought to bear somewhere, then we are not likely to get those requests.

Senator SASSER. Well, Mr. Blum, thank you for your testimony and support for this program. We will probably have a few additional questions for you for the record which we would submit. I would ask if we do so that you respond in a timely fashion, which I am sure you will do.

Mr. BLUM. We would be happy to do so, sir.

Senator SASSER. Thank you very much.

Mr. BLUM. Thank you.

Senator SASSER. Our next witness this morning will be Mr. William Gadsby, the Associate Director of the Human Resources Division of the General Accounting Office.

Mr. Gadsby, if you would be good enough to introduce your colleagues there for the record, you may proceed.

TESTIMONY OF J. WILLIAM GADSBY, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY PAUL POSNER, INTERGOVERNMENTAL RELATIONS GROUP, AND RANDY JONES, SAN FRANCISCO REGIONAL OFFICE

Mr. GADSBY. Thank you, Mr. Chairman, it would be my pleasure. On my right is Paul Posner. Paul is the head of our intergovernmental relations group and provides leadership for our studies that affect State and local governments. On my left is Randy Jones. Randy is from our San Francisco regional office and he has been the project leader for the work that we have been doing looking at the State and local cost estimation process, both at the Federal level and out in the States.

Mr. Chairman, I am going to summarize my statement to some extent, so I would appreciate it if the entire statement could be included in the record.[1]

Senator SASSER. It will be included in the record in its totality.

Mr. GADSBY. Mr. Chairman, I am pleased to be here today to discuss our views on the State and Local Cost Estimate Act. Last year Senator Durenberger asked us to review both Federal and State approaches for preparing estimates on legislation imposing costs on lower levels of Government. Our objective was to identify State approaches that could improve the Federal process for estimating the cost of these mandates.

At the Federal level we reviewed the cost estimation activities of CBO by examining eight of the bills with the most significant State and local cost impacts for which CBO prepared estimates during the 99th Congress. We discussed the cost estimate preparation with CBO analysts and with congressional staff on committees having jurisdiction over those eight bills. We also visited eight States and we sent a questionnaire out to 50 States to gather information about their cost estimation processes.

The preparation of State and local cost estimates is a constraint driven process. First, the time available to prepare them is generally quite limited because of legislative deadlines. CBO usually prepares an estimate when a bill is reported out of committee and the estimate is to be available for inclusion in the committee report on the bill. Typically, this gives CBO about 3 to 5 days to prepare an estimate.

Second, proposed legislation subject to estimates covers a myriad of subjects. As a result, the cost estimate for each bill must be developed separately, with data collection and other contacts tailored to each set of circumstances. To get needed information, CBO typically relies on telephone contacts with committee staff having ju-

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[1] See p. 27.

risdiction over the bill, with Federal agency officials, and with selected State and local governments as well as interest groups.

Third, preparing Federal estimates takes priority over State and local costs. Bills can be and are considered on the floor in the absence of a State and local cost estimate, but they are rarely considered without a Federal cost estimate. For example, for the Safe Drinking Water Act the Federal estimate was included in the committee reports, but the State and local cost estimates were not available until after the bill had passed both Houses.

States face similar constraints in preparing estimates for State legislation which imposes costs on local governments. Like CBO, they are faced with limited time. About two-thirds of the States that responded to our questionnaire said that they generally had from 1 to 6 days to prepare estimates. Also, their methodological approaches are similar to CBO's in that they generally rely on telephone contacts and on nonsystematic data collection.

Mr. Chairman, you asked us to compare outcomes of the cost estimate process at both the Federal level and the State levels. At the Federal level we contacted 14 congressional committees with jurisdiction over the eight bills that we had reviewed in detail. Committee staff generally said that CBO's cost estimates provided useful information and that this was an important function of the cost estimates.

Also, most committee staffs said that CBO's approach and methodology were reasonable and almost all respondents described CBO as an objective organization that produced reliable estimates.

Although CBO was a valued source of information, its estimates had a mixed effect on actually modifying mandates. They had no perceived effect in changing the course of five of the eight pieces of legislation we had reviewed. Committee staffs said that program and policy goals often overshadow cost issues, particularly State and local costs.

Other factors contributing to the lack of effect included the lack of State and local interest group involvement and the intent of some legislation simply to shift costs to other non-Federal entities.

On the other hand, for three bills CBO's cost estimates were used during the Committee deliberations and did influence the course of the legislation. An example would be one that Mr. Blum brought up relating to the Garcia decision where CBO was asked to do a special analysis of the impact of that Supreme Court decision relating to the application of overtime wage provisions to State and local governments.

The request had stemmed from conflicting cost claims by various interest groups. According to the Committee staff we talked to, CBO's estimate validated the significance of the Garcia decision cost impact and influenced the passage of legislation in a form that mitigated State and local costs. In another case, involving the education of the handicapped amendments in 1986, CBO's estimate contributed to legislative modifications that also reduced estimated State and local cost impact.

At the State level, the early results from our questionnaire which went out to legislative leaders also indicate that the primary impact of the State's cost estimates is to increase legislative awareness. Only a quarter of the respondents said that the cost estimates

either significantly deterred, modified or resulted in the provision of funding for mandates.

Mr. Chairman, in view of the constraints inherent in the cost estimate process, we believe CBO's approach is reasonable. The users of the CBO cost estimates said they served the primary purpose of providing information to the Congress that either adds to or confirms understanding about State and local cost impact.

Further, the estimates on occasion have influenced the course of legislation by actually reducing State and local cost impacts. Therefore, the State and local CBO cost estimates are useful and we would support the reauthorization of the State and Local Cost Estimate Act.

It is important to note that the cost estimate process alone cannot generally be expected to deter mandates on States and localities. From our work, this seems to be more a function of commitment by legislators as well as interest groups representing State and local governments.

Certain changes could be made to the process, however, which would help focus more attention on the cost imposed on State and local governments.

Some would increase CBO's workload and would raise the question of whether the additional information would be worth the cost. These changes would call for CBO to prepare some or all of its estimates earlier in the legislative process, as has been mentioned earlier. We feel that estimates prepared on bills perhaps reported from the Subcommittee level, for instance, would offer greater potential for influencing the debate because they would be available at a point in time when positions on issues are more susceptible.

Second, CBO could prepare subsequent estimates as significant bills are amended. This would provide updated information, but again, such estimates might not always be feasible because of the short time available often for considering amendments.

Third, CBO could prepare estimates on appropriations and tax bills. Some interest groups have noted that such legislation can have significant impact on State and local governments.

Another change that may not significantly affect workload could be to have CBO include more information on the extent and nature of the contacts and assumptions made in developing its State and local cost estimates. Committee staff we talked to said that such information could provide them with a greater understanding of the estimates, and thereby perhaps make them more useful.

Mr. Chairman, that concludes my statement and we would be glad to answer any questions that you might have.

Senator SASSER. Well, thank you, Mr. Gadsby. I certainly agree with one of your statements about having fiscal notes on tax measures. Last year's tax reform bill, for example, had profound tax consequences on State and local governments and I believe that the Congressional Budget Office might at the very least have focused on some of the key features of that tax bill which had far-reaching State and local fiscal consequences.

One of these, for example, was the impact of last year's so-called tax reform bill on sales tax deductibility in a number of States, including my State of Tennessee. Personally, I believe that CBO

fiscal notes on tax measures would be very useful to the Congress, indeed.

You referred to the study being done by GAO at Senator Durenberger's request regarding the methods and effectiveness of fiscal notes at the Federal and State level. Can you tell us just how common a practice it is for State governments to prepare local cost estimates on legislation? You might want to defer that to one of our colleagues there.

Mr. GADSBY. Well, Mr. Chairman, the practice is quite common. From the questionnaire that we sent out, 36 of the 42 State officials that have responded to date said that they do in fact prepare local cost estimates. So the practice is quite common.

Senator SASSER. Well, do the State officials feel that the benefits of the cost estimates out-weigh the costs associated with them?

Mr. GADSBY. Generally, yes. In terms of the State officials, those would be those involved in the cost estimation process; 84 percent of them said that the benefits out-weighed the costs or the resources that they had to devote to preparing those estimates. We also had a similar question in the questionnaire we sent to legislative leaders. We have not got as many of those back and fully analyzed the results, but it appears that the trend is the same, that there would be a substantial number feeling that the benefits outweighed the costs.

Senator SASSER. You mentioned some changes down the road that might improve the Federal Government's program for preparing State and local government fiscal notes and they included the preparation of estimates at an earlier stage in the process, updating them for amendments and, of course, extending them to cover tax and appropriations legislation as we discussed a moment ago.

Are any of these proposals in place in the State programs that the General Accounting Office studied?

Mr. GADSBY. Yes. Let me talk about the first one and then ask Mr. Posner to talk about the other two.

With regard to the timing, or when these are prepared, States prepared the local cost estimates at a number of points in the legislative process, but the most predominant point was just after bills were introduced. There was a feeling that this enabled the legislators to use the information during most of the legislative process.

Perhaps to illustrate, we could turn to the State of Colorado which we visited. Out there, a preliminary fiscal note is prepared right after the bill is introduced, and this fiscal note does not give all the details, but it outlines whether or not that piece of legislation is going to have a fiscal impact or whether it is not.

Subsequently, when the bill clears the Committee a full cost estimate is prepared that outlines what the specific cost impact would be in more detail.

Paul would you like to comment on the amendments?

Mr. POSNER. Yes. With regard to amendments, 85 percent of the State officials responding to our questionnaire indicate that they do update their cost estimates for amendments at least some of the time. Of these, 45 percent update their estimates for amendments most of the time. Further, 69 percent of the officials indicated that updating was a very useful practice in their State.

With regard to the exclusions that you referred to, 60 percent of the States responding to our questionnaire noted they do not exclude any types of legislation from the purview of local cost estimates. In fact, only 14 percent of the States exclude estimates on appropriation bills and only 9 percent of the States responding exclude estimates on tax legislation.

Senator SASSER. If the CBO could prepare fiscal notes earlier in the legislative process, but not on a full scale—that is, if they prepared fiscal notes only for selected bills, has your office given any thought to the criteria that might be used to target such bills?

Mr. GADSBY. I think that would have to be, obviously, costs, and the significance of the bill on State and local governments would be important criteria. I think there would have to be some relationship between committees and CBO that would have to be developed in order to identify those bills and put the process in motion. Perhaps the interest groups should be involved in that as well.

Paul, would you have anything you would like to add to that?

Mr. POSNER. I think it is key that the interest groups develop a concerted effort to identify early on those major pieces of legislation likely to move that would impose costs. If they could work with the committees to generate early CBO cost estimates, that could be helpful in identifying early warnings, so to speak, of the cost impacts.

Senator SASSER. Right.

Well gentlemen, your testimony this morning has been very helpful to us and we appreciate very much your appearing before the subcommittee.

Mr. Gadsby, we may very well have additional questions that will occur to us on down the line in a day or two and we would like to propound those questions to you for the record if they do occur to us, and we would appreciate a prompt response.

Mr. GADSBY. We would be happy to respond, Mr. Chairman.

Senator SASSER. Gentlemen, thank you very much for being with us this morning. We appreciate your testimony.

Our next witness this morning will be Mr. Gerald Miller, the executive director of the National Association of State Budget Officers.

Mr. Miller, we welcome you here this morning and look forward to your testimony.

TESTIMONY OF GERALD H. MILLER, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS [1]

Mr. MILLER. Thank you, Mr. Chairman. It is a pleasure to be here on the topic of extending the authorization of the State and Local Government Cost Estimate Act.

I think, as you stated, the bill does expire as of September 30, 1987 and I am here on behalf of the State budget officers and the National Governors Association to strongly encourage the reauthorization.

Before I get into some of my specific remarks and the questions that you asked us to respond to, let me just briefly describe the or-

[1] See p. 36 for Mr. Miller's prepared statement.

ganization that I work for, which is, as you stated, the National Association of State Budget Officers. The association is made up of the chief fiscal officer in each State. As an example, in your State of Tennessee, David Manning, who is the commissioner, is a member of the association.

The association works in a number of ways in terms of trying to inform our members of what is going on through analyzing Federal legislation, to describing, which you may have seen, our survey of the fiscal condition of the States, which is a biannual publication that we try to keep Congress and others informed as to the fiscal condition of the States through the timely development on issues that are of concern to State and local government.

We also serve as the fiscal arm for the National Governors Association on fiscal and tax matters and do the analysis for them, specifically, of any legislation or any other requests that they may have as it relates to fiscal and tax matters.

In regards to the State and Local Government Cost Estimating Act, I believe this act does serve, as has been stated, a useful purpose and should be part of the congressional legislative process.

In particular, there are three topics I would like to discuss with you today: Why I believe the legislation should be retained; the impact that it has had on State and local government; and then just a brief discussion to amplify what GAO said as to how the fiscal note process works in the States.

First, the need for the Federal fiscal notes. The need for fiscal notes in Federal legislation mandating State and local government actions can be traced to two important factors—accountability and efficiency. One of the basic responsibilities of any legislative body, be it a city council, a State legislature, or Congress, is to simultaneously decide how much to spend on which programs, and how high taxes and other revenue sources should be.

Therefore, when any elected official evaluates the appropriateness of a piece of legislation, he or she must consider many factors, including the scope of the problem being addressed, the people who will benefit from the proposed program, and the cost of the program.

A key ingredient into what makes the legislative decisionmaking process work is that the legislative body is accountable for both deciding how to spend the money and how much revenue is raised. This built in accountability tends to break down and leads to less efficient spending of total Government funds when a higher level of Government mandates a lower level of Government to take certain actions.

This less efficient use of Government funds occurs because the benefit and cost considerations are separated between different levels of Government. The higher level of Government doing the mandating will tend to place more weight on the benefit considerations and less on the cost than they otherwise would because their own budget will not be affected by the cost.

Conversely, the lower level of Government will be forced to spend some of its own revenue in certain ways and therefore either alter its overall spending priorities or increase taxes to pay for the mandated programs. These problems were the primary reason why the act was originally passed. It was originally passed in 1981.

At that time, it appeared that the number of federally mandated programs was growing steadily. In many instances very little information on the cost of the mandated programs were available for Congress to consider in their evaluation of the particular pieces of legislation.

Many State and local government organizations including mine, the National Governors Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities strongly supported this bill. It was hoped that this bill would provide Congress with more information on the potential cost of proposals to mandated programs and therefore help evaluate cost considerations in the legislative process and help reduce the number of mandated bills being passed.

Obviously, Congress also believed that it was important for them to have this information as the bills, as you mentioned, passed unanimously in both the Senate and the House. This need for estimates of the cost of federally mandated programs has certainly not changed since 1981. In 1988 and years beyond it will still be very important for Congress to have good estimates of the costs being considered to be imposed on State and local governments. Therefore, I believe that the State and Local Government Cost Estimate Act should be reauthorized.

With respect to the impacts, I really cannot disagree with anything that CBO or GAO has stated. It is difficult to accurately assess the impact that the inclusion has had. Candidly, from the perspective of where we sit, I do think the impact has probably been small. The impact has been minimal, but not because the estimated cost and mandates are not important and not needed, but because other factors, including problems encountered in preparing timely estimates and the lack—which I think is very important—the lack of State-by-State breakdowns of cost.

One major problem is that the act requires that the cost estimates be made for mandated bills as they are reported by the Committee and must be included in the committee report. This creates, I think as has been stated, problems—I do not think I reiterate those—with respect to timing, et cetera.

Another problem, as I mentioned, with the current act is that cost estimates on a State-by-State basis are not required. Presently, when a Congressman or Senator is considering a mandate bill, he or she is not able to ascertain from the Committee report what impact the bill will have on his or her home State. I think your comment, Mr. Chairman, on the sales tax deductibility issue was a very relevant point.

The only estimate available in the Committee report is the estimate for the overall cost of the bill. State-by-State cost breakdowns would be very helpful because costs can vary significantly from State to State.

For example, a bill of major priority to the Governors at the present time is welfare reform. This bill will have significantly different cost impacts from State to State. These cost estimates should be available on a State-by-State basis to aid the committee as it works to develop the bill.

While the intent of the State and Local Government Cost Estimate Act was to provide Congress with cost estimates and mandate

legislation to help them make better informed decisions, in practice I am not sure it has had, as I stated, that great of an impact.

With respect to at the State level, I will just briefly summarize here that our analysis is very similar to what GAO has stated. It should be pointed out that there are 42 States now that require legislation. The first was in 1968 and there have been 10 additional since 1982, which I think indicates the general feeling of the importance in this whole area of what is going on.

The exact processes used in different States vary widely. Two of the States, in our analysis, that I think are probably the best in this area are California and Wisconsin. Some of the other States are also doing an excellent job.

The study that was done in 1982 on the effectiveness of the State fiscal note requirements, concluded that the fiscal note process now operating in States, regardless of the form, are perceived by State and local government officials as effective instruments in determining the impact of mandates on local government. It also revealed that in 63 percent of the States—at that time there were only 35 that had them—officials felt that there was a marked positive impact on legislation.

This suggests that the fiscal note process could be strengthened by preparing the fiscal notes on selected bills as they are introduced, updating the fiscal notes as the bills are amended, and incorporating more input from State and local government officials into preparing the cost estimates.

In conclusion, Mr. Chairman, I believe that the current requirement to estimate the costs that would be imposed on State and local governments by federally mandated legislation should be reauthorized. Cost considerations should be an important factor in evaluating any piece of legislation and this fiscal note requirement helps elevate and focus attention on the estimated cost of proposed mandates.

While the impact of the fiscal notes has probably been minimal since they were required in 1982, this can be attributed in part to the fact there is not often enough time between when the bill is reported out of Committee and when the Committee report must be presented. The current timing requirements also mean that the Committee must do its work without the aid of official cost estimates.

Currently, as I have stated, 42 States have fiscal note requirements on mandated legislation and perhaps some of the procedures used by some of the States regarded as having good fiscal note procedures could be incorporated in the Federal Government process to help improve the effectiveness of the Federal fiscal note requirements.

The procedural changes that could be considered include preparing the cost estimates when mandated legislation is introduced, updating the fiscal notes when the bills are amended during the process, perhaps establishing more systematic estimating procedures that would more directly involve State and local government associations and officials.

Thank you, Mr. Chairman.

Senator SASSER. Thank you, Mr. Miller.

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One question occurs to me. Just how aware are State officials—State budget officers, for example—of the Federal fiscal note process?

Mr. MILLER. I would say limited. In my association we are trying to do more to let them know about that, but I would say at this stage their knowledge is fairly limited.

Senator SASSER. Well, are State officials willing to play, in your view, a larger role in this effort—the whole fiscal note effort—by working together with the Congressional Budget Office in supplying the information that the Budget Office needs to help in the preparation of fiscal notes?

Mr. MILLER. Mr. Chairman, I think the answer to that is yes. Again, as the discussions here this morning have indicated, I think that good judgment needs to be used as to what bills are important and not important, but I think on those that there is a mutual understanding of the importance of the bill, I think clearly the National Governors Association is very willing to work with CBO to have more information available, not only on the overall cost but also on State-by-State cost to help you in your deliberations.

Senator SASSER. Well, I suspect that the fiscal note program would be enhanced considerably if we could have greater cooperation. After all, if States do have well developed fiscal note programs on their own, I would hope they would share their expertise with the Congressional Budget Office, which in turn, of course, would inform the Congress of various aspects of the legislation that we have before us, and in that way mutually reinforce at the Federal level and at the State level a sensitivity to the whole fiscal note process.

Mr. Miller, thank you for appearing before us today. I am going to have to leave and go to the Banking Committee. We may have additional questions for you later.

Before this hearing closes today I would like to enter into the record a statement in support of the fiscal note program from the National League of Cities.[1]

In their testimony the League makes some further suggestions about the need for a variety of revisions in the fiscal note program. I think that many of these suggestions are sound ones.

I am confident that the subcommittee will delve into this matter at greater length in future hearings on this whole subject, but I think the immediate task before us is to ensure that this worthwhile program is reauthorized within the next several months, and your observations and support of that effort are very welcome, Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Senator SASSER. After that occurs I am hopeful that many of the more far-reaching suggestions for an enhanced fiscal note program will be fully considered by the Subcommittee.

We are going to hold the record open until Monday, August 3 for further statements and exhibits to the legislation that interested parties might like to offer.

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[1] See p. 44.

Again, my thanks to the witnesses who have testified here today. You have been very helpful and we appreciate your testimony and your interest in this regard.

Thank you.

The Subcommittee is adjourned.

[Whereupon, at 10:55 a.m., the Subcommittee adjourned subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

100TH CONGRESS
1ST SESSION

S. 1530

To extend for five years the authorization granted under the State and Local Government Cost Estimate Act of 1981.

IN THE SENATE OF THE UNITED STATES

JULY 23 (legislative day, JUNE 23), 1987

Mr. SASSER introduced the following bill; which was read twice and referred jointly, pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs with instructions that if one committee reports, the other committee has thirty days of continuous session to report or be discharged.

A BILL

To extend for five years the authorization granted under the State and Local Government Cost Estimate Act of 1981.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the State and Local Government Cost Estimate Act of 1981 is amended by striking out "September 30, 1987" and insert in lieu thereof "September 30, 1992".

Statement of
James L. Blum
Assistant Director
Budget Analysis Division
Congressional Budget Office

before the
Subcommittee on Government Efficiency,
Federalism, and the District of Columbia
Committee on Governmental Affairs
United States Senate

July 30, 1987

Mr. Chairman, I am pleased to have the opportunity to review with you today the experience of the Congressional Budget Office (CBO) in implementing the State and Local Government Cost Estimate Act of 1981. The authorization for CBO to prepare state and local cost estimates, or fiscal notes as they are commony called at the state level, expires on September 30, 1987. We welcome your efforts to extend this authorization for another five years or even to make it a permanent addition to our responsibilities. Although the fiscal notes have had only limited impact on legislation during the past five years, we believe their preparation is a useful process and should be continued.

STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT OF 1981

The State and Local Cost Estimate Government Act, enacted in December 1981, directs the CBO to prepare estimates of the cost that state and local governments would incur in carrying out or complying with legislation that is reported in the House or the Senate. These cost estimates may be limited to bills that, in the judgment of CBO, are likely to result in an aggregate annual cost to state and local governments of at least $200 million, or are likely to have exceptional fiscal consequences for a geographic region or a particular level of government.

The cost estimates are an extension of CBO's responsibilities under section 403 of the Congressional Budget Act to estimate the federal budget costs of legislation reported from committees. This new costing requirement took effect on October 1, 1982, and CBO's first state-local cost

estimate was prepared in November 1982. Since then, we have prepared over 2,000 bill cost estimates that included a statement of potential state and local government costs from the enactment of federal legislation.

It might be useful at this point to present some statistics on our state-local fiscal notes. Table 1 summarizes our experience during the 98th and 99th Congresses. We have prepared on average close to 600 state and local bill cost estimates each year, most of which--90 percent--were judged to have no cost impact. Only 10 percent were estimated to have some impact,

TABLE 1. CBO'S EXPERIENCE WITH STATE AND LOCAL COST ESTIMATES, 1983-1986

	1983	1984	1985	1986	Total
Total Federal Cost Estimates	593	661	591	627	2,472
State and Local Cost Estimates	573	641	533	585	2,332
State and Local Estimates Showing Costs or Savings	77	57	45	46	225
Percent of state and local estimates	13.4	8.9	8.4	7.9	9.6
State and Local Estimates Showing Impact of $200 Million or More	24	6	14	8	52
Percent of state and local estimates	4.2	0.9	2.6	1.4	2.2

SOURCE: Congressional Budget Office.
NOTE: The same legislative proposal may have more than one cost estimate prepared for different versions and for different Houses.

and of these, about one out of every four would have had a cost impact exceeding $200 million a year. While the overall number of bills having a state and local cost impact has been smaller than we anticipated, we have spent considerable staff effort in preparing state-local fiscal notes--on the order of two to four person years each year.

CBO'S PREPARATION OF FISCAL NOTES

We have integrated the preparation of state-local fiscal notes into our federal cost estimating work. Each cost analyst, who specializes in a particular functional area, has the responsibility of preparing both the federal and the state-local cost impact of a legislative proposal. Occasionally, we assign two analysts to a proposal, with one concentrating on the federal budget costs and the other on state-local costs. Each cost estimate report contains a statement on federal costs and on state and local government costs.

In preparing our federal cost estimates, we have interpreted costs to be the direct budgetary costs or savings that state and local governments would incur as a result of the reported legislation. We do not try to estimate potential second-order effects of legislation, such as possible effects on state tax revenues as a result of a bill's impact on the economy. We also generally do not try to estimate the cost of paperwork or administrative costs of carrying out legislation if these could be absorbed within existing budgetary resources. Our estimates are presented as an aggregate cost of all state and local governments and not for individual

jurisdictions. Our intent is to provide the Congress with a ballpark figure of the potential impact on state and local government budgets. Sometimes this cost is presented in terms of a range of possible impacts, and sometimes we are unable to estimate even a range because of the uncertainities involved in implementing the legislation.

We do not use a standard cost methodology, a single data base, or a single network of state and local government contacts for two reasons. First, legislation having an impact on state and local governments spans a wide range of program areas, so that each bill presents a unique analytic problem that must be solved separately. Second, we have very little time in which to prepare our cost estimates. We normally have only three to four days between the time a bill is reported and when the committee report is filed for printing. Sometimes we are allowed as little as one day in which to prepare our bill cost estimates. The first priority in our bill costing work is to estimate the impact on federal costs. If we cannot complete a state and local cost estimate in time to include it in the committee report, we try to supply one later.

We generally rely on national data sources and federal agencies for the information to calculate cost impacts. Since most bills are amendments to current laws, there are usually people in the federal agencies who have programmatic expertise in the area and can provide useful information or can tell us whom to call at the state and local level. We often contact a number of state and local government officials by telephone for infor-

mation, and occasionally one or more of the national state and local government organizations can be of assistance.

From the beginning, we adopted the policy of preparing state-local fiscal notes for all bills reported in the House and Senate, whenever possible, and not just those limited to annual costs in excess of $200 million or those having exceptional fiscal consequences for a particular geographic area. To determine, even tentatively, whether or not a bill would meet these criteria, we would have to do much of the required analytic work to complete a cost estimate. Therefore, we decided that we should go ahead and complete our analysis for as many bills as possible and provide this information to the Congress as a routine matter.

IMPACT OF CBO FISCAL NOTES

In contrast to our federal cost estimates, the CBO state-local fiscal notes do not appear to have had much impact on the legislative process. In fact, we have not experienced much interest in them. We are rarely, for example, asked any questions about them, and should we fail to complete one in time to include it in a committee's report, we are not usually pressured by the committee to provide one later. My impression is that not even the public interest groups pay much attention to our state-local fiscal notes, although they enthusiastically supported the enactment of the State and Local Government Cost Estimate Act.

In a few instances, however, our state-local cost estimates have played a key role in shaping federal legislation. One of these instances

involved the recent immigration reform legislation, for which we did considerable analytic work on the cost impact for state and local governments. This work served as the basis for the provision in the legislation to provide up to $4 billion in federal funds to cover the added state-local costs of the immigration legalization program.

Another instance involved some amendments to the Fair Labor Standards Act resulting from the Supreme Court decision on Garcia v. San Antonio Metropolitan Transit Authority. The issue involved a potential $0.5 billion to $1.5 billion impact of the decision on state and local governments for the cost of overtime compensation. In this case, the House Education and Labor Committee requested CBO to estimate this cost before it decided what legislative remedy to pursue.

As might be expected, reaction to large state-local cost estimates has been varied. A CBO state-local cost estimate for the provisions in the Education of the Handicapped Amendments of 1986 led to their amendment in the final legislation to reduce the potential costs to state governments. This is the only instance I can point to where a CBO state-local fiscal note had such a deterring effect. On the other hand, in the case of the Safe Drinking Water Act where we estimated a potential $2.5 billion to $3.5 billion in capital costs and $200 million to $300 million in annual operating costs, the design of the legislation was unaffected.

Nevertheless, we believe that our state-local fiscal notes are a useful contribution to the legislative process. In my opinion, given our time and

data constraints, we have provided relatively good information in an objective and unbiased manner. The requirement to do state and local fiscal impacts has probably improved our federal cost estimates by giving us better data and a clearer sense of how legislation would be implemented. Therefore, we strongly support extending the authorization for these cost estimates for another five years or even indefinitely.

POSSIBLE CHANGES IN THE FISCAL NOTE PROCESS

You asked, Mr. Chairman, for our thoughts on possible changes to our state-local fiscal note responsibilities, such as preparing the estimates at the subcommittee level and for Floor amendments, lowering the threshold criteria, sharing the fiscal notes with public interest groups, and preparing an annual report. In general, we believe the legislation is fine as it is and no changes are needed at the present time.

Although CBO is only required to prepare cost estimates for bills reported from full committees, we are often asked to prepare cost estimates for bills at other stages of the legislative process. For example, many committees want to know the cost implications of bills before they proceed to the reporting stage. In these cases, we also include the potential state-local cost impact in our bill cost estimates if this is significant. So where a request is made, we do respond. But to mandate that we prepare state-local fiscal notes at the subcommittee level or for floor amendments would go beyond our responsibilities for federal cost estimates and would have a definite impact on our workload and ability to provide the Congress with federal budgeting information.

Lowering the significant bill threshold criteria for our state-local fiscal notes, however, would not have any significant effect on our present cost estimating work. As I have indicated earlier in my statement, we have chosen to ignore the $200 million threshold so that lowering it would make no difference to us.

We could easily share our fiscal notes with the state-local interest groups, but I do not think that sharing this information would substitute for these organizations becoming more active in tracking legislation of interest to them. The primary role of CBO is to serve the information needs of the Congress and not those of particular interest groups.

Public interest groups could probably use better means for legislative tracking than relying on CBO cost estimates. For example, the organizations representing state and local governments could use their own resources to establish a central clearinghouse to track legislation that would affect them. It also could monitor the issuance of new federal regulations that sometimes have significant cost consequences for state and local governments. This clearinghouse could prepare its own annual report on the state-local costs of federal legislation, based on CBO fiscal notes as well as its own sources of information. Such a clearinghouse eventually might be very useful to us in getting state-local cost information for our fiscal notes. It certainly would facilitate the distribution of our cost estimates to interested groups.

United States General Accounting Office

GAO Testimony

For release
on delivery
Expected at
10:00 a.m., EDT
Thursday
July 30, 1987

Reauthorization of the State and Local Cost Estimate Act

Statement of
J. William Gadsby, Associate Director
Human Resources Division

Before the
Subcommittee on Government Efficiency,
Federalism and the District of Columbia
Committee on Governmental Affairs
United States Senate

GAO/T-HRD-87-20

REAUTHORIZATION OF THE STATE AND LOCAL COST ESTIMATE ACT

Summary of GAO Testimony

The process the Congressional Budget Office (CBO) uses to prepare estimates of the cost impact of pending legislation on states and localities is driven by a number of constraints, including legislative deadlines, availability of information, and other priorities. Given these constraints, the approach taken by CBO is reasonable. Further, its estimates serve a useful purpose in providing information to the Congress about the impact of proposed federal legislation on states and localities. However, CBO's estimates have generally not had a major effect on the course of legislation. Often programmatic and policy issues are of greater concern than state and local costs.

Changes, however, could be made to the cost estimate process to focus greater attention on state and local costs. In some cases, these changes could increase CBO's workload. Some of these changes include

--Preparing estimates earlier,

--Updating estimates for amendments, and

--Preparing estimates on bills now excluded.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our views on the State and Local Cost Estimate Act. Last year, Senator Durenberger asked us to review both federal and state approaches for preparing estimates on legislation imposing costs on lower levels of government. Our objective was to identify state approaches that could improve the federal process for estimating the costs of these mandates.

At the federal level, we reviewed the cost-estimating activities of the Congressional Budget Office by examining eight of the bills with the most significant state and local costs for which CBO prepared state and local estimates during the 99th Congress. A list of these bills is attached to this statement. We discussed cost estimate preparation with CBO analysts and with Congressional staff on committees having jurisdiction over those bills. We also visited 8 states and sent a questionnaire to all 50 states to obtain information on their cost estimation processes.

Preparation of Cost Estimates

The preparation of state and local cost estimates is a constraint driven process. First, the time available to prepare estimates is generally quite limited because of legislative deadlines. CBO usually prepares an estimate when a bill is reported out of committee and the estimate is to be available for inclusion in the committee report on the bill. Typically, this gives CBO about 3 to 5 days to prepare the estimate.

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Second, proposed legislation subject to estimates covers a myriad of subject matters. As a result, the cost estimate for each bill must be developed separately, with data collection and other contacts tailored to each set of circumstances. To get the needed information, CBO typically relies on telephone contacts with committee staff having jurisdiction over the bill, the federal agency responsible for administering the program, and selected state and local governments and interest groups.

Third, preparing federal estimates takes priority over state and local cost estimates. Bills can be and are considered on the floor in the absence of state and local estimates. But they are rarely considered without a CBO estimate of the federal cost impact. For example, for the Safe Drinking Water Act (P.L. 99-339), the federal estimate was included in committee reports but the state and local cost estimates were not available until after the bill passed both houses.

States face similar constraints in preparing cost estimates for state legislation that imposes mandates on local governments. Like CBO, they are faced with limited time. About two-thirds of the states responding to our questionnaire said that they generally had from 1 to 6 days to prepare estimates. Also, methodological approaches used by states are similar to CBO's in that they generally rely on telephone contacts and nonsystematic data collection.

Outcomes of the Cost Estimate Process

Mr. Chairman, you asked us to compare outcomes of the cost

estimate process at the federal and state levels. At the federal level, we contacted the 14 congressional committees with jurisdiction over the eight bills we reviewed. Committee staff generally said that CBO's cost estimates provide useful information about the state and local costs associated with legislation and that this is an important function of the cost estimates. Also, most committee staff said that CBO's approach and methodology were reasonable. Almost all of our respondents described CBO as an objective organization that produces reliable estimates.

Although CBO was a valued source of information, its estimates had a mixed effect on modifying mandates. They had no perceived effect in changing the course of five of the eight pieces of mandate legislation we reviewed. Committee staff said that programmatic and policy goals often overshadow cost issues--particularly state and local costs. Other factors contributing to the lack of effect include: lack of state and local interest group involvement and the intent in some legislation to shift costs to nonfederal entities.

On the other hand, for three bills, CBO's cost estimates were used during committee deliberations and did influence the course of legislation. For example, in considering legislation to amend the Fair Labor Standards Act, the House Committee on Education and Labor asked CBO to do a special analysis of the impact of the Garcia Supreme Court decision relating to the application of overtime wage provisions to state and local

governments. The request stemmed from conflicting cost claims by various interest groups. According to committee staff, CBO's estimate validated the significance of the cost impact of the Garcia decision and influenced the passage of legislation in a form that mitigated state and local costs. In another case, the Education of the Handicapped Amendments of 1986 (P.L. 99-457), the CBO estimate contributed to legislative modifications that reduced the estimated state and local cost impact.

At the state level, the preliminary results from our questionnaire to state legislative leaders also indicate that the primary impact of the states' cost estimates is to increase state legislative awareness of local cost impacts. Only a quarter of the respondents said that cost estimates significantly deter, modify, or result in the provision of funding for state mandates.

Observations

Mr. Chairman, in view of the constraints inherent in the cost estimate process, we believe CBO's approach is reasonable. The users of the CBO estimates said they served their primary purpose of providing information to the Congress that adds to or confirms understandings about the state and local cost impact. Further, the estimates have on occasion influenced the course of legislation by reducing state and local cost impacts. Therefore, the CBO cost estimates are useful and we support the reauthorization of the State and Local Cost Estimate Act.

It is important to note that the cost estimate process alone cannot be generally expected to deter mandates on states and

localities. The actual reduction of mandates seems to be more a function of commitment by legislators as well as the interest groups representing state and local governments. Certain changes could be made in the process, however, to help focus more attention on the costs imposed on state and local governments by mandates. Some would increase CBO's workload and thus raise the policy question of whether the additional information is worth the cost. These changes would call for CBO to:

-- Prepare some or all estimates earlier in the legislative process than the committee report stage. Estimates prepared on bills reported by subcommittees, for instance, offer greater potential for influencing the debate.

-- Prepare subsequent estimates as significant bills are amended. This would provide updated information to members, but such estimates might not always be feasible given the short time frame often provided for considering amendments.

-- Prepare estimates on appropriation and tax bills. As some interest groups have noted, such legislation can have significant cost impacts on state and local governments.

Another change that could be accomplished that may not significantly increase CBO's workload would be to have CBO include more information on the extent and nature of contacts and the assumptions made to develop its state and local estimates.

The committee staff we talked with said that such information could provide them with a greater understanding of the estimates.

This concludes my statement and I would be pleased to answer any questions that you may have.

CBO CASE EXAMPLES FROM 99TH CONGRESS

Bill Title	Bill Number	Dollar Amount of Estimate[1]	Bill Status
Safe Drinking Water	HR 1650 S 124	$3.5 bill. capital costs; $200-300 mill. annual costs	Passed
Education of the Handicapped	HR 5520 S 2294	$575 mill. annual costs $530 mill.-$2.7 billion annual costs	Passed
Water Resources Development	HR 6 S 1567	$524 mill. annual costs	Passed
Rehabilitation Act Amendments	HR 4021 S 2515	$500 mill. annual costs	Passed
Immigration Reform	HR 3810 S 1200	$225-250 mill. annual costs	Passed
Housing Act of 1985	HR 1	$274 mill. total costs	Not Passed
Ocean Dumping	HR 1957	$30 mill. annual costs	Not Passed
Fair Labor Standards Act Amendments	HR 3530 S 1570	$0.5-1.5 bill. annual cost savings	Passed

[1] In seven of the eight cases, the CBO estimate for both the House and Senate versions of each piece of legislation indicated the same state and local cost figures. For the Education of the Handicapped bill, the CBO figures differed for the House and Senate versions.

Reauthorization of the State and Local Government Cost Estimate Act of 1981

Testimony of

Gerald H. Miller
Executive Director
National Association of State Budget Officers

Before the

Senate Subcommittee on Government Efficiency,
Federalism and the District of Columbia
U.S. Congress

July 30, 1987

Senator Sasser, I am Jerry Miller, Executive Director of the National Association of State Budget Officers. I would like to thank you for this opportunity to testify on the topic of extending the authorization of the State and local Government Cost Estimate Act of 1981, which under current law is scheduled to expire on September 30, 1987.

Before I directly address this topic, I would like to tell you about the organization I work for. The National Association of State Budget Officers (NASBO) represents each Governor's primary budget officer and their staff. NASBO helps keep its members informed of:

- o federal legislation that may impact state government budgets,
- o the fiscal condition of all the states
- o budgeting techniques being used by the states, and
- o timely issues that are of general and special concern to state governments.

We provide this information by means of annual meetings, through special reports and by holding training seminars on various topics each year. In addition, NASBO prepares fiscal and tax analyses for the National Governors' Association (NGA).

In regards to the State and Local Government Cost Estimate Act of 1981, I believe this Act serves a very useful purpose and should be a part of the Congressional legislative process. In particular there are three topics I would like to discuss with you today:

1. Why I believe fiscal notes on federal mandate legislation should be retained.
2. The impact the fiscal notes have had since the passage of the State and Local Government Cost Act of 1981 and discuss reasons why the fiscal notes have not had a greater impact.

3. Discuss the fiscal note processes being used by the states.

The Need For Federal Fiscal Notes

The need for fiscal notes in federal legislation mandating state and local government actions can be traced to two important factors -- accountability and efficiency. One of the basic responsibilities of any legislative body -- be it a city council, a state legislature or congress -- is to simultaneously decide how much to spend on which programs and how high taxes and other revenue sources should be. Therefore, when any elected official evaluates the appropriateness of a piece of legislation, he or she must consider many factors including the scope of the problem being addressed, the people who will benefit from the proposed program and the cost of the program. A key ingredient into what makes the legislative decision making process work is that the legislative body is accountable for both deciding how to spend the money and how and how much revenue is raised.

This built-in accountability tends to breakdown and leads to less efficient spending of total government funds when a higher level of government mandates a lower level of government to take certain actions. This less efficient use of government funds occurs because the benefit and cost considerations are separated between different levels of government. The higher level of government doing the mandating will tend to place more weight on the benefit considerations and less on the costs then they otherwise would because their own budget will not be affected by the costs. Conversely, the lower level of government will be forced to spend some of its revenue in a certain way and therefore either alter its overall spending priorities or increases taxes to pay for the mandated program.

These problems were the primary reasons why the State and Local Government Cost Estimate Act was originally passed in 1981. At that time it appeared that the number of federally mandated programs was growing steadily. In many instances, very little information on the costs of the mandated programs were available for Congress to consider in their evaluation of the particular pieces of legislation. Many states and local government organizations including the National Governors' Association, the National

League of Cities and the National Association of Counties strongly supported this bill. It was hoped that this bill would provide Congress with more information on the potential costs of proposals to mandate programs and therefore help elevate cost considerations in the legislative process and help reduce the number of mandate bills being passed. Obviously Congress also believed that it was important for them to have more information on the estimated costs of legislation to mandate programs to state and local governments because this bill was passed unanimously by both the Senate and the House.

This need for estimates of the costs of federally mandated programs has certainly not changed since 1981. In 1988 and the years beyond, it will still be very important for Congress to have good estimates of the costs being considered to be imposed on state and local governments. Therefore, I believe the State and Local Government Cost Estimate Act of 1981 should be reauthorized.

Impact of the Fiscal Notes Since 1981.

It is very difficult to assess the impact that the inclusion of the estimated costs on state and local governments in federal mandate legislation has had on Congress. Obviously, it is not known what legislation would have or would not have passed without this information. However, in total candor, I have to say that the impact has probably been small.

The impact has been minimal, not because that estimated costs of mandates are not important and not needed, but because of other factors including problems encountered in preparing timely the estimates and the lack, of state-by-state breakdowns of the costs.

One major problem is that the 1981 Act requires that the official cost estimates be made for mandate bills as they are reported by a committee and must be included in the committee report. This creates two problems:

1. Much of the work on legislation is often completed by the committees. Therefore, the legislation is considered and altered by the committee without the benefit of cost estimates.

2. There is not much time between when a bill is reported by a committee and when the committee report is printed. Typically, the report must be printed three days after the bill is reported, which is not much time to prepare these estimates. Then, when the bill is amended on the floor, there is often not enough time to revise that estimated costs.

Another major problem with the current Act is that cost estimates on a state-by-state basis are not required. Presently, when a Congressman or Senator is considering a mandate bill, he or she is not able to ascertain from the committee report what impact the bill will have on his or her home state. The only estimate available in the committee report is the estimate for the overall cost of the bill. State-by-State cost breakdowns would be very helpful because costs can vary significantly form state-to-state. For example, current welfare reform legislation which is being considered at the committee level, will have significantly different cost impacts from state-to-state. These cost estimates should be available on a state-by-state basis to aid the committee as is works to develop this bill.

While the intent of the State and Local Government Cost Estimate Act of 1981 was to provide Congress with cost estimates of mandate legislation to help them make better informed decisions, in practice, this is not necessarily happening.

State Fiscal Note Processes

According to information compile by the Advisory Commission on Intergovernmental Relations, 42 states require fiscal notes be attached to at least some mandate legislation. (See Table 1). Maryland was the first state to enact a fiscal note requirement, doing so in 1968. Eight more states enacted mandate cost estimate requirements from 1970 to 1975 and twenty-three states adopted requirements from 1976 to 1981. Ten other states enacted fiscal note requirements since 1982, when the federal government adopted its current requirement.

The exact process used by the states to prepare their mandate cost estimates vary widely. Some states prepare fiscal notes for all mandate legislation, while others only require it for certain legislation. Some states prepare the estimated costs for the bill as it is introduced and some states require it only when the bill is passed out of committee. Some states use a systematic survey procedure to calculate the estimated cost, while other states use less structured estimating procedures.

Two states considered to have very good fiscal note procedures are California and Wisconsin. In California, a special unit in the Department of Finance prepares the fiscal notes. The Legislative Council decides which bills should have fiscal notes and these bills are then required to have a fiscal note before they can be considered by any legislative committee. Local agencies included in an established information-gathering network are asked to supply cost estimates and from this sample a state-wide cost is calculated. The estimates are then distributed to both state agencies and local government organizations for comment. The resulting fiscal note is then attached to the bill and as the bill is amended in the legislative process, the fiscal note is updated.

In Wisconsin, a fiscal note is required on selected mandate legislation, and a search is done to determine if any other pending legislation might be affected by the bill. The cost estimates are either prepared in-house or if necessary information is gathered from an established sample of local communities. In addition, the fiscal note is updated every time the bill is amended.

A 1982 study by Catherine Lovell and Handria Egan on the effectiveness of state fiscal note requirements concluded that "the fiscal note processes now operating in states, regardless of the form, are perceived by state and local government officials as effective instruments in determining or integrating the impact of mandates on local government." It also revealed that in 63 percent of the then 35 states with fiscal note requirements, government officials strongly felt that there was a marked positive impact and this group included the states with the more detailed procedures such as California and Wisconsin.

This suggest that the federal fiscal note process could be strengthened by:

- o preparing the fiscal notes on selected bills as they are introduced,
- o updating the fiscal notes as the bills are amended, and
- o incorporating more input from state and local government officials into preparing the cost estimates.

Conclusion

In conclusion, I believe the current requirement to estimate the costs that would be imposed on state and local governments by federal mandate legislation should be reauthorized. Cost considerations should be an important factor in evaluating any piece of legislation and this fiscal note requirement helps elevate and focus attention on the estimated costs of proposed mandates. While the impact of the fiscal notes have probably been minimal since they were required in 1982, this can be attributed in part to the fact that there is often not enough time between he the bill is reported out of committee and when the committee report must be printed to prepare thorough cost estimates. The current timing requirements also mean that the committee must do its work without the aid of the official cost estimates.

Currently, 42 states have fiscal note requirements on mandate legislation and perhaps some of the procedures used by some of the states regarded as having good fiscal note procedures could be incorporated in the federal government process to help improve the effectiveness of federal fiscal note requirements. The procedural changes that should be considered include preparing the cost estimates when mandate legislation is introduced, updating the fiscal notes when the bills are amended during the legislative process and perhaps establishing more systematic estimating procedures that would more directly involve state and local government officials.

Table 1

STATE FISCAL NOTE AND MANDATE REQUIREMENTS
RELATING TO LOCAL GOVERNMENTS

State and Region	States Attaching Fiscal Notes	MANDATE LEGISLATION: States Reimbursing Mandate Costs	MANDATE LEGISLATION: Type of Mandate Requirement
United States	42	12	
New England			
Connecticut	X		
Maine			
Massachusetts	X	X	stat.
New Hampshire	X		
Rhode Island	X	X	stat.
Vermont	X		
Mideast			
Delaware			
Maryland	X		
New Jersey	X		
New York			
Pennsylvania	X		
Great Lakes			
Illinois	X	X	stat.
Indiana	X		
Michigan	X	X	const.
Ohio	X		
Wisconsin	X		
Plains			
Iowa	X		
Kansas	X		
Minnesota			
Missouri	X	X	const.
Nebraska	X		
North Dakota			
South Dakota	X		
Southeast			
Alabama	X		
Arkansas	X		
Florida	X	X	stat.
Georgia	X		
Kentucky	X		
Louisiana	X		
Mississippi	X		
North Carolina	X		
South Carolina	X		
Tennessee	X	X	const.
Virginia	X		
West Virginia	X		
Southwest			
Arizona	X		
New Mexico	X		
Oklahoma			
Texas	X		
Rocky Mountain			
Colorado	X	X	stat.
Idaho	X		
Montana	X	X	stat.
Utah	X		
Wyoming	X		
Far West			
California	X	X	const.
Nevada	X		
Oregon	X		
Washington	X	X	stat.
Alaska		X	const.
Hawaii			

Source: Advisory Commission on Intergovernmental Relations (ACIR)

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STATEMENT

of the

NATIONAL LEAGUE OF CITIES

on

THE FISCAL NOTE PROCESS

submitted to the

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY,

FEDERALISM & THE DISTRICT OF COLUMBIA

COMMITTEE ON GOVERNMENTAL AFFAIRS

U.S. SENATE

July 30, 1987

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The National League of Cities (NLC) -- which represents 16,000 cities through direct membership and membership in 49 affiliated state municipal leagues -- strongly supports the reauthorization of the requirement that fiscal notes be prepared for legislation reported by congressional committees. However, the fiscal notes process in its current form has been generally ineffective and should be strengthened and expanded by establishing a comprehensive policy for the documentation of costs imposed on state and local governments by federal laws and regulations.

We believe that NLC's proposal for an enhanced fiscal notes process should be included in any budget reform legislation adopted by Congress this year. The proposed process should be a part of budget legislation and is needed to ensure accountability and awareness of the impact on state and local governments of federal laws and regulations and to institutionalize a system for ascertaining the cost to state and local government of complying with federal requirements. It would involve the executive branch in the process by requiring the inclusion of cost estimates associated with the Administration's proposed budget and program activities in the President's budget submissions each year.

The existing process -- due to expire on September 30, 1987 unless reauthorized -- has proven to be ineffective for several reasons. For many important pieces of legislation -- the Safe Drinking Water Act Amendments of 1986, for example -- the Congressional Budget Office (CBO) has simply not prepared an estimate of the costs for state and local government. First, a comprehensive data base does not exist which can be used by CBO as a baseline for the preparation of its estimates. Our proposal is designed to correct that problem by including the executive branch in the process and establishing an institutionalized data base. Second, CBO has not been able to develop an institutional capability to prepare fiscal notes. The process to be set up under our proposal should greatly facilitate the establishment of such an institutional capability.

NLC'S PROPOSAL

Under our proposal, a three-part process for documenting state and local costs mandated by federal laws and regulations would be established. It would strengthen and tighten requirements of existing law in several ways.

1. OMB Cooperation with State and Local Governments

The Office of Management and Budget (OMB) should be required to provide information to state and local governments concerning the cost of complying with mandates and to work with state and local organizations in developing those cost estimates. This result would be accomplished by adding the mandates requirement to a provision of existing law (31 USC 1112) which requires that information be provided to state and local governments on the availability of federal financial assistance. Other changes would include required consultation with representatives of state and local government and a mandatory annual reporting requirement.

The information obtained through this process would, of course, be used in conjunction with the development of the President's budget under the second part of the proposal.

2. Federal Budget Documents

The President should be required to include detailed information in the annual federal budget documents relating to the cost of existing mandates imposed on state and local government and future mandates to be imposed on state and local government under the

President's proposed program. The purpose of this requirement would be to establish a baseline for comparing the costs of proposed mandates with existing mandates and to enable CBO to prepare fiscal notes on a comparative basis. CBO would be required to analyze the difference in costs between the Administration's proposed program and the legislation as approved by committee, including these differences associated with changes made to the regulatory program assumed in the President's budget.

3. CBO Fiscal Notes

The requirement of existing law that CBO prepare fiscal notes for legislation reported out of committee should be reauthoized. However, the effective date should be delayed until fiscal year 1989 (i.e., October 1, 1989) so that fiscal notes would not be required until the executive branch has developed baseline data. Additionally, the triggering threshold should be reduced from $200,000,000 to $50,000,000 and fiscal notes should be made mandatory.

CONCLUSION

We strongly urge the enactment of our proposal as an essential first step towards recogizing the central role of state and local governments as the implementers of national policy in our federal system. NLC has strongly supported mandates legislation (S. 585, sponsored by Sen. Dave Durenberger of Minnesota) which would prohibit Congress from enacting legislation which imposes new costs on state and local government unless the Federal Government reimburses state and local government for the new costs. We support the establishment of an enhanced fiscal notes process as a compromise that will ensure a greater awareness of these costs.

The establishment of procedures for ascertaining and reporting the costs incurred by state and local government in complying with existing and new federal laws and regulations will ensure government in the sunshine and an awareness of shifts in fiscal budens between levels of government. We strongly urge prompt congressional action on our modest proposal for reform of the fiscal note procedures.

Proposed Legislative Language

(overstrikes: deletions from existing law; underlining: additions to existing law)

OMB Cooperation with State and Local Governments: Amendments to 31 USC 1112

Section 1112. Fiscal budget, and program information

. . . .

(f) In cooperation with the Director of the Congressional Budget Office, and the Comptroller General, and after consultation with appropriate representatives of State and local governments, the Director of the Office of Management and Budget ~~(to the extent practicable)~~ shall no later than January 1 of each year provide State and local governments with fiscal, budget, information on the cost to State and local governments of complying with particular federal laws and regulatory requirements, and program information necessary for accurate and timely determination by those governments of the impact on their budgets of assistance, laws, and regulatory requirements of the United States Government.

Federal Budget Documents: Amendments to 31 USC 1105

Section 1105. Budget contents and submission to Congress

(a) During the first 15 days of each regular session of Congress, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(1) . . . .

(26) a separate detailed statement of the costs incurred by State and local governments for complying with particular federal laws and regulatory requirements for the prior fiscal year and the costs to be incurred by such governments for complying with such laws and requirements for the current fiscal year, the fiscal year for which the budget is submitted, and each of the four fiscal years following such fiscal year.

CBO Fiscal Notes: Amendments to 2 USC 653

Section 653. Analysis by Congressional Budget Office

(a) The Director of the Congressional Budget Office shall~~, to the extent practicable,~~ prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee--
(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;
(2) an estimate of the cost which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal year, together with the basis for each such estimate;
(3) a comparison of the estimates of costs described in paragraphs (1) and (2) with any available estimates of costs made by such committee or by any federal agency and an analysis and explanation of the differences between its estimates of costs described in paragraph (2) and the estimates prepared under 31 U.S.C. 1105(a)(26) and included in the budget submitted to Congress by the President, including an explanation of any differences which may be attributable to differences between the federal laws and regulatory requirements assumed in the President's budget and the regulatory approach approved by the committee; and
(4) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, analysis, explanation, and description so submitted shall be included in the report accompanying such bill or resolution ~~if timely submitted to such committee~~ before such report is filed.

(b) For purposes of subsection (a)(2), the term "local government" has the same meaning as in section 103 of the Intergovernmental Cooperation Act of 1968.

(c) For purposes of subsection (a)(2), the term "significant bill or resolution" is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to State and local governments of ~~$200,000,000~~ $50,000,000 or more, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government.

ILLUSTRATIVE "FISAL NOTES" ISSUED BY THE
CONGRESSIONAL BUDGET OFFICE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

July 15, 1986

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for H.R. 3810, the Immigration Control and Legalization Amendments Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner

cc: Honorable Hamilton Fish, Jr.
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

July 15, 1986

1. BILL NUMBER: H.R. 3810

2. BILL TITLE: Immigration Control and Legalization Amendments Act of 1986

3. BILL STATUS:

As ordered reported by the House Committee on the Judiciary, June 25, 1986.

4. BILL PURPOSE:

H.R. 3810 makes major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A of this title makes the employment of unauthorized aliens unlawful and establishes a special counsel to investigate and prosecute immigration-related unfair employment practices. Part B authorizes additional appropriations for the Immigration and Naturalization Service (INS) and the Executive Office of Immigration Review (EOIR) for fiscal years 1986 and 1987 to carry out the provisions of this act and calls for increased enforcement and adjudication activities. This part also makes it unlawful to transport any unauthorized alien into the United States and authorizes an appropriation of $35 million for an immigration emergency fund. Part C requires a system to verify the immigration status of aliens applying for benefits under certain programs, and establishes procedures and provides for federal reimbursement of states' costs to implement and operate this system.

Title II of the bill governs the legalization of unauthorized aliens already in the country. It empowers the Attorney General to adjust the status of unauthorized aliens to that of lawfully admitted aliens eligible for temporary residence if they apply, meet certain conditions, can establish that they illegally entered the United States prior to January 1, 1982, and have been residing here continuously since then. After one year in temporary status, the Attorney General can adjust their status to that of permanent resident. In addition, it limits for a period of five years federal program benefits for which the unauthorized aliens granted resident status are eligible, and authorizes appropriations for fiscal years 1987 through 1991 to reimburse states for the costs of providing public assistance to legalized aliens and educational services to legalized alien children.

Title III reforms existing law regarding legal immigration. Part A amends those provisions of the Immigration Act relating to nonimmigrant workers (H-2 workers), provides legal resident status to certain agricultural workers, amends the procedures for obtaining approval of H-2 petitions, allows the Secretary of Labor to charge fees to recover the cost of processing applications for certification, and authorizes a program designed to recruit domestic workers for temporary labor. Part B changes certain numerical limitations, changes requirements for foreign students, amends the immigration laws regarding G-4 special immigrants, and establishes a visa waiver pilot program for certain visitors.

Titles IV and VI require a number of reports to the Congress, and Title V provides for assistance to state and local governments for the costs of incarcerating illegal aliens and certain Cuban nationals.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990	1991
Direct Spending Provisions						
Required Budget Authority						
Function 550	---	1	44	184	261	277
Function 570	---	---	---	---	---	---
Function 600	---	*	29	120	154	171
Function 650	---	---	---	---	---	---
Estimated Outlays						
Function 550	---	1	44	184	261	277
Function 570	---	*	*	*	5	16
Function 600	---	8	115	257	321	337
Function 650	---	*	3	18	38	55
Amounts Subject to Appropriation Action						
Estimated Authorization Level						
Function 500	---	25	25	26	27	27
Function 600	---	72	630	1,132	1,332	1,395
Function 750	434	557	442	423	427	407
Estimated Outlays						
Function 500	---	25	25	26	27	27
Function 600	---	4	177	866	1,268	1,352
Function 750	---	442	455	428	428	411
Total Spending						
Required Budget Authority/ Estimated Authorization Level	434	655	1,170	1,885	2,201	2,277
Estimated Outlays	---	480	819	1,779	2,348	2,475
Estimated Revenues	---	70	166	54	54	---
Net Budget Impact						
Estimated Net Increase or Decrease (-) in the Deficit	---	410	653	1,725	2,294	2,475

* Less than $0.5 million.

Basis of Estimate:

Control of Illegal Immigration (Functions 550, 600 and 750). Title I of the bill authorizes additional appropriations for the INS of $422 million in fiscal year 1986 and $419 million in fiscal year 1987, and for the Executive Office of Immigration Review of $12 million in 1986 and $15 million in 1987. The funds authorized for the INS are intended to provide improved services, enhanced community outreach and in-service training of personnel. This authorization would provide for enhanced enforcement, including enforcement of employer sanctions, and additional processing of applications and adjudication, primarily resulting from the legalization and agricultural worker programs outlined by the bill. Because this estimate assumes enactment on approximately October 1, 1986, it assumes that none of the funds authorized for fiscal year 1986 will be appropriated, and therefore those authorizations will result in no outlays. While this title does not authorize appropriations for those agencies after 1987, CBO estimates that the additional activities required by this bill will result in additional costs of approximately $220 million in 1988, declining to $150 million in 1991.

This title also requires the appointment of a special counsel within the Department of Justice for Immigration-Related Unfair Employment Practices. The special counsel would be responsible for receiving and investigating complaints of such practices and bringing them, when appropriate, before specially trained administrative law judges. Based on information from the Immigration and Naturalization Service and the National Labor Relations Board, CBO expects this process to cost $2 million in 1987 and 1988 and $3 million in later years. The bill does not, however, authorize appropriations for this activity. Also required would be a system to validate the Social Security account numbers of all individuals employed in the United States. Employers would be required to submit each account number and receive a validation code. CBO estimates that approximately 80 million numbers would be submitted for validation each year. Based on information from the Social Security Administration, CBO estimates that this system would cost about $130 million each year, beginning in 1988, with slightly higher costs in the first year. Both of these estimates are highly uncertain.

Title I authorizes an appropriation of $35 million for an immigration emergency fund, to be used for increased enforcement of the nation's immigration laws and for providing assistance to states and localities facing major immigration problems. CBO does not show an increase in outlays as a result of this fund, because spending is prohibited unless the President declares an immigration emergency, and it is impossible to predict when, or whether, such a declaration would be made.

The bill requires that the immigration status of aliens applying for a number of federal benefit programs be verified with the INS beginning no later than October 1, 1988. All state costs would be fully reimbursed by the federal government. CBO estimates that this provision would have no significant budgetary effect in 1987 or in 1988, would reduce outlays by $25 million in 1989, and by $20 million a year thereafter. These savings are very uncertain. The only tests of the verification system have been for the Unemployment Compensation program in a few states, where savings were found to be modest. The CBO estimate for the Unemployment Compensation program is based on these test results. Savings for the Aid to Families with Dependent Children, Medicaid, and Food Stamp programs are based on the number of cases found to be in error because of alien status, as reported in the quality control data systems. This estimation procedure underestimates savings. Costs are based on information provided by the INS and assume in most cases a

statewide system of checking. These costs are underestimated because some states with county-run programs would have higher costs. Also, there is expected to be considerable adjudication, because the INS data are out-of-date and incomplete; this cost cannot be estimated.

The following table summarizes the costs of Title I.

Estimated Budget Impact -- Control of Illegal Immigration
(Functions 550, 600, and 750)

(by fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990	1991
Authorizations						
Immigration and Naturalization Service a/	422	419	---	---	---	---
Executive Office of Immigration Review a/	12	15	---	---	---	---
Immigration Emergencies	---	35	---	---	---	---
Status Verification b/	---	*	*	-15	-10	-10
Other Estimated Costs c/	---	2	351	317	311	286
Total Estimated Authorizations	434	471	351	302	301	276
Estimated Outlays	---	371	364	297	292	270

* Less than $0.5 million.

a. It is assumed that enactment of this bill will not allow time for funds to be appropriated in fiscal year 1986; therefore, no outlays are shown for the 1986 authorizations.

b. The bill authorizes such sums as may be necessary for the INS. This estimate also includes CBO's estimate of costs and savings in functions 550 and 600.

c. This amount reflects estimated costs for which no authorizations are provided in the bill. These costs are largely for INS enforcement and processing activities after 1987, and for the required system for validating an individual's Social Security number.

Legalization (Functions 550, 570, 600, and 650). By legalizing some unauthorized aliens currently in the United States, Title II would increase federal outlays in functions 550 (Health, including Medicaid), 570 (Medicare), 600 (Income Security), and 650 (Social Security). First, the provisions that legalize unauthorized aliens would entitle the aliens to receive benefits after five years from a number of federal assistance programs. Such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require

recipients to be citizens or have resident status. Because the provisions of the bill preclude most aliens granted resident status from receiving any program of federal financial assistance based on "financial need," Medicaid, and Food Stamps for a period of five years, federal outlays for these programs generally do not begin until fiscal year 1992, beyond our estimating period. An exception is made in the bill for the aged, blind, and disabled and for medical assistance provided to children under 18 years of age, pregnant women, and those in need of emergency services. Hence, the cost estimate does show increased federal outlays for SSI, Medicaid, and Food Stamps beginning in fiscal year 1987. In addition, in other programs that are not based on "financial need," such as Disability Insurance (DI), some legalized aliens who would not have collected benefits would now be expected to do so.

Second, Title II provides an authorization for the appropriation of such sums as may be necessary in fiscal years 1987 through 1991 to reimburse states for 100 percent of the costs of public assistance to eligible legalized aliens. Aliens granted resident status are eligible for five years. The bill also authorizes payments over the same five-year period to state education agencies to assist in providing educational services for the legalized alien children in elementary and secondary schools.

Added federal program outlays as a result of legalizing unauthorized aliens under Title II of the bill are shown in the table below. These added outlays are estimated to be $8 million, $272 million, $1,143 million, $1,646 million, and $1,777 million in fiscal years 1987 through 1991, respectively.

This estimate is very uncertain, particularly because of the three factors discussed below. First, this estimate includes federal outlays for the grants to states that are large enough to cover the full estimated costs to states for public assistance to the legalized aliens and education services for the legalized alien children. Less than the full costs, however, might be appropriated. Second, this estimate depends importantly on the number of unauthorized aliens in the United States, for which little hard evidence exists. It has been generally accepted that there were 3 million to 6 million unauthorized aliens in the United States in the late 1970s. The CBO estimate uses 4.5 million aliens in 1977, the midpoint of the range. Even less is known about how the numbers of unauthorized aliens in the United States may have changed in recent years, although anecdotal evidence indicates there has been some net inflow. Based on conversations with persons knowledgeable about the unauthorized alien population, CBO assumes a net increase of 150,000 in each year beginning in 1980. In 1986, then, CBO assumes that there are 5.6 million unauthorized aliens in the United States.

Of the 5.6 million unauthorized aliens, CBO estimates that 40 percent have resided continuously in the United States since January 1, 1982, making them eligible for legalization under this bill. This figure is based on percentages from Immigration and Naturalization Service (INS) studies, which have been adjusted upward to reflect the assumption that some unauthorized aliens are aware of the possibility of legalization because of legislative activity in recent years. Among those eligible, we assume--again based on conversations with experts--that approximately 60 percent would apply for and be granted resident status. The resulting number of unauthorized aliens who would be granted resident status is estimated to be 1.4 million.

Finally, the number of legalized aliens who would qualify for government assistance programs is uncertain. In large part, this reflects a lack of data on the economic and demographic characteristics of unauthorized aliens--for example, their employment status and wages or their age and marital status. In developing the estimates of

numbers of legalized aliens who would receive benefits from government programs, CBO assumes that the unauthorized aliens would have to show at the time of their application for residency that they had not been nor would they be likely to be "public charges," as specified in Section 212 of the Immigration and Nationality Act. However, the bill would allow resident status to an unemployed alien if that alien could demonstrate a history of employment without reliance on public cash assistance. Thus, at the time the aliens would become residents, most would presumably be working. Over time, however, they could be expected to resemble the U.S. population as to receipt of benefits from entitlement programs. By 1990, CBO assumes that the percentage of unauthorized aliens receiving government benefits would resemble that of the U.S. population for similar age, sex, ethnic origin, and income groupings. In the interim years, CBO assumes that a growing fraction of potential eligibles would in fact receive benefits: 5 percent in 1987, 30 percent in 1988, and 75 percent in 1989.

In addition to the general basis of these estimates, each individual program estimate entailed specific procedures and assumptions. The details for each program are discussed below.

The SSI program provides benefits to aged, blind, and disabled persons. Benefit levels are set by the federal government, which pays the full cost of the program, although states may supplement federal benefits and most do. Under this bill, legalized aliens would be eligible to receive SSI upon confirmation of residency status. Costs to the federal government are estimated to rise from an insignificant amount in 1987 to $116 million in 1991. CBO's cost estimate is based on a recipiency rate of 0.90 percent of the alien population for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, an assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the population. The aliens are estimated to receive the full SSI basic benefit, or $4,131 in 1987.

Food stamps are issued to eligible low-income households. Benefits (and approximately one-half of state administrative expenses) are funded by the federal government. As with AFDC, most legalized aliens could not receive food stamps until 1992, although legalized aliens who received SSI could also receive food stamps. Food stamp costs are estimated to be insignificant in 1987, rising to $6 million in 1991. This figure is based on the estimated number of aliens added to the SSI rolls and a food stamp participation rate of 45 percent, the estimated current rate for SSI recipients. Average annual benefits per person in 1987 are estimated to be $444.

The Unemployment Compensation program provides weekly cash benefits to workers who are involuntarily unemployed and who have had at least a moderate amount of work experience during a one-year period prior to losing their jobs. Under this bill, Unemployment Compensation costs for newly legalized alien workers are estimated to rise from $3 million in 1987 to $115 million in 1991. This estimate is based on several assumptions for newly legalized alien workers. Consistent with recent labor force data on young Hispanics, CBO assumes that 80 percent of these workers would participate in the labor force, a higher rate than the average of the U.S. population. Because most probably work in service industries, which are less prone to cyclical unemployment, and because even low-wage jobs in this country probably appear attractive when compared to those in the country of origin, CBO assumes that the newly-legalized population would have unemployment rates one percentage point lower than those in effect for the rest of the U.S. population. Further, assuming, as

some evidence indicates, that these individuals' earnings are about 60 percent of those of comparable U.S. production or nonsupervisory workers (and assuming a 50 percent wage replacement rate), CBO estimates that the average weekly benefit amount for these workers would be about $97 in 1987, one-fourth lower than that for the remainder of the population.

The Disability Insurance (DI) program covers persons who are totally disabled (whose disability is expected to last at least 12 months or result in death) and who have sufficient work histories in covered employment. Costs in DI of the legalized aliens are estimated to rise from an insignificant amount in 1987 to $54 million in 1991. Because the evidence indicates that unauthorized aliens are relatively young on average, they would be less likely to be disabled than the U.S. population as a whole. Also, because they have been in the United States for relatively short periods of time, they might not qualify for DI, which requires for most workers covered earnings during 20 out of the last 40 calendar quarters. For all of these reasons, their DI recipiency rate would be less than that of the U.S. population; CBO estimates the rate to be about 0.1 percent in 1987, with this rate rising to about 0.7 percent in 1991. Their benefit levels would also be less, reflecting lower than average wages and shorter work histories. The CBO estimates average benefits to be about $4,300 in 1991.

The Medicaid program provides health care coverage to recipients of AFDC and SSI and to others who may qualify as "medically needy." Under the bill, Medicaid would be provided to aliens on SSI and to children, pregnant women, and emergency cases who could meet Medicaid's eligibility criteria. Costs are estimated to rise from $1 million in 1987 to $231 million in 1991. Medicaid beneficiaries are based on numbers of aliens estimated to receive SSI and numbers estimated to receive AFDC who would be children, pregnant women, or in need of emergency services, with some increase for the medically needy. Benefits are current averages per SSI or AFDC enrollee, adjusted to 1987 and later.

Costs in the Medicare program, which provides health care coverage to the aged and disabled covered by Social Security, would rise to $16 million by 1991. These costs would be for those aliens who would receive DI.

Reimbursements to states for public assistance costs are estimated to cost $2 million in 1987 and $527 million in 1991. These reimbursements are based on costs in state and local General Assistance (GA) programs. These programs are fully-funded by states and localities and provide benefits to low-income persons and families who do not qualify for the federally-funded cash welfare programs. GA provides both cash payments and medical coverage. Two groups of aliens would qualify for GA: those who would never be eligible for federal welfare programs (for example, low-income working two-parent families with children, and non-aged, non-disabled couples or single persons without children) and those who would be made ineligible for AFDC by the bill for a period of five years.

Among the first group, CBO estimates that 1.3 percent of the aliens would receive an average annual cash GA benefit of $1,725 in 1987. This estimate is based on current recipiency rates and benefit levels in GA programs. Among the second group, CBO's estimate for families who would have qualified for AFDC is based on the assumption that 52 percent of the aliens given resident status would be married men and women, reflecting demographic data on unauthorized aliens, which show about 79 percent to be adults and the majority to be young and male, and marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin

and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. The average annual cash benefit for these alien families is estimated to be $2,150 in 1987. These aliens would also receive medical GA. Their average annual medical benefits are estimated to be $715 in 1987.

Reimbursements to states for education services are estimated to cost $1 million in 1987 and $712 million in 1991. This cost assumes a full appropriation of funds to cover total costs of educating the eligible alien children. Of the total legalized alien population, 15 percent--or about 200,000--are estimated to be children of school age. Average per pupil costs were $3,086 during the 1983-1984 school year, the latest data available. CBO assumes that this 1983-1984 per pupil cost would be used in calculating reimbursements to the states in 1987. This is consistent with current procedures in Chapter I education aid to disadvantaged children. Outlays reflect a spending pattern of 2 percent in the first year, 77 percent in the second year, and 21 percent in the third year.

The table on the following page summarizes the estimated costs associated with Title II.

Agricultural Worker Provisions (Functions 500, 550, 600, and 650). Title III of the bill provides for the availability of temporary agricultural workers and for the legalization of certain illegal alien workers recently employed in agriculture. CBO estimates the agricultural worker provisions would increase federal outlays by $56 million in 1987, rising to $324 million by 1991.

The bill authorizes such sums as may be necessary to enable the Department of Labor (DOL) to make determinations and issue certifications under a new H-2A worker program, targeted at agriculture. The H-2 worker program allows foreign workers to enter the United States temporarily to work in jobs for which employers cannot find domestic workers. In making this estimate, it is assumed that the combination of employer sanctions and a strengthened INS would act as effective deterrents to the hiring of illegals to perform agricultural labor. It is further assumed that the H-2A worker program would expand to fill the otherwise unmet demand for agricultural labor, thereby increasing the administrative costs of DOL.

According to staff from the Department of Agriculture (USDA), if employer sanctions were effectively enforced, growers would need between 250,000 and 500,000 guest workers. Because the CBO assumes that about 250,000 illegal alien workers in agriculture would be legalized under the special agricultural worker provision discussed below, the number of H-2A workers could range up to 250,000 guest workers. The DOL is currently receiving about 800 applications per year for H-2 agricultural workers, and each application requests an average of 25 workers. Administrative costs were about $3 million in 1985, or $3,750 per application, for the agricultural part of the H-2 worker program, and they are estimated to increase by about 5 percent per year.

Currently, those illegal immigrants who work in agriculture are located primarily in the West and Southwest, while most H-2 workers are employed in the East. Since western agricultural concerns tend to be far larger than eastern, it is assumed that future applications would be for about 40 workers on average. Using a projected cost per application of about $4,100 in 1987, CBO estimates that 1987 administrative costs would be $13 million. This figure is based on an estimated 3,125 applications: 125,000 guest workers--the midpoint of the estimated range noted above--and an estimated 40 workers per application.

Estimated Budget Impact -- Legalization (Functions 550, 570, 600, and 630)

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
SSI (Function 600)					
Required Budget Authority	*	23	83	103	116
Estimated Outlays	*	23	83	103	116
Food Stamps (Function 600)					
Estimated Authorization Level	*	1	4	6	6
Estimated Outlays	*	1	4	6	6
Unemployment Compensation (Function 600)					
Required Budget Authority	---	---	---	---	---
Estimated Outlays	3	47	88	116	115
Disability Insurance (Function 630)					
Required Budget Authority	---	---	---	---	---
Estimated Outlays	*	3	18	38	54
Medicaid (Function 550)					
Required Budget Authority	1	39	156	218	231
Estimated Outlays	1	39	156	218	231
Medicare (Function 570)					
Required Budget Authority	---	---	---	---	---
Estimated Outlays	*	*	*	.5	16
Reimbursement of State Public Assistance Costs (Function 600)					
Estimated Authorization Level	2	96	370	507	527
Estimated Outlays	2	96	370	507	527
Payments to States for Education Costs (Function 600)					
Estimated Authorization Level	70	516	690	717	754
Estimated Outlays	1	63	423	653	712
Subtotal: Direct Spending Provisions					
Required Budget Authority	1	62	239	321	347
Estimated Outlays	4	112	345	480	532
Subtotal: Amounts Subject to Appropriation Action					
Estimated Authorization Level	72	613	1,064	1,230	1,288
Estimated Outlays	4	160	798	1,166	1,245
TOTAL					
Estimated Authorization Level/ Required Budget Authority	73	675	1,303	1,551	1,635
Estimated Outlays	8	272	1,143	1,646	1,777

* Less than $0.5 million.

In addition, the bill requires the federal government to establish a program to (a) recruit domestic workers to perform services that might otherwise be performed by temporary foreign nonimmigrant laborers, and (b) monitor the terms and conditions under which temporary agricultural workers are employed in the United States. A total of $10 million per year beginning in 1987 is authorized for these purposes.

The estimated budget impact of the temporary agricultural worker program in H.R. 3810 is summarized in the following table.

Estimated Budget Impact--Temporary Agricultural Workers
(Function 500)

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
H-2A Worker Program					
Estimated Authorization Level	13	13	14	15	15
Estimated Outlays	13	13	14	15	15
Domestic Worker Recruitment					
Authorization Level	10	10	10	10	10
Estimated Outlays	10	10	10	10	10

The bill's provision for special agricultural workers would establish legal status for agricultural workers who could demonstrate that they had worked at least 60 days in agricultural employment during the period from May 1, 1985 to May 1, 1986. Since these workers would be provided with legal resident status, federal outlays for entitlement program benefits would rise by an estimated $5 million in 1987 and $295 million in 1991.

Workers covered under the special agricultural worker provision are estimated to total about 250,000. This figure was derived by adjusting the number of farm workers upward for turnover during the year and downward for the 60-day work requirement. Further, it is assumed that about 25 percent of farm workers are illegal aliens and that 60 percent would come forward to apply for and be accepted as legal residents. CBO was unable to determine whether the provisions designed to allow additional special agricultural workers beginning in 1990 in the event of a worker shortage would increase the number granted resident status in the future.

Most of the additional entitlement spending would occur in means-tested benefit programs such as AFDC, Medicaid, SSI, and Food Stamps, although the program with the largest increase would be Unemployment Compensation. Unemployment Compensation benefits are estimated to increase from $5 million in 1987 to $61 million by 1991. These estimates are based on the assumptions that unemployment rates of agricultural workers are about 75 percent higher than the national average, agricultural wages are lower than overall average wages, and that the average weekly benefit would be about $97 in 1987. AFDC costs are expected to increase as the number of recipient families is estimated to rise by about 14,000 by 1990. Similarly, the number of SSI recipients is estimated to increase by about 4,600 persons by 1990. Medicaid outlays associated with the increases in AFDC and SSI beneficiaries are estimated to rise by about $5 million in 1988 and $53 million by 1991.

Title III also specifies that a commission would be established that would examine the impacts of the special agricultural worker provisions on wages, working conditions, and issues. The CBO estimates that the costs of the commission, including personnel and other non-labor expenses, would be about $2 million annually over the next five years.

The table on the following page summarizes the estimated costs associated with the special agricultural worker provisions.

Reports to the Congress (Function 750). Title IV requires the preparation of a number of Presidential reports. These include a comprehensive triennial report on admissions under the Immigration and Nationality Act and the impact of those admissions, reports on unauthorized alien employment and discrimination in employment, biennial reports on the implementation of the temporary agricultural worker program, two reports on the legalization program and its impact, and a report on the visa waiver pilot program. Title VI requires the Attorney General to prepare a report for the Congress on the resources required by the INS to carry out its enforcement and service responsibilities. The cost of these reports is assumed to be included in the amounts authorized for the INS.

In addition, the bill requires the Civil Rights Commission to monitor the implementation and enforcement of the employer sanctions provisions and investigate any allegations of unlawful discrimination due to these provisions. The Commission is to report as to whether implementation and enforcement of these provisions has resulted in a pattern of unlawful discrimination. Implementation of this provision is expected to cost approximately $1 million each year.

State and Local Assistance for Incarceration of Illegal Aliens and Certain Cuban Nationals (Function 750)

Title V would require the Attorney General to reimburse state and local governments for the costs of imprisoning these aliens and Cuban nationals convicted of felonies and for their pre-trial and post-trial detention. Appropriations are authorized for such sums as are necessary to carry out this provision. CBO estimates that reimbursements would be required for approximately 6,000 prisoners at an average cost of about $14,000 per prisoner-year in 1987, rising to $17,000 per year by 1991.

Estimated Budget Impact -- Incarceration Costs (Function 750)

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
Estimated Authorization Level	85	90	95	100	105
Estimated Outlays	70	90	95	100	105

Revenues. CBO assumes that the Attorney General would collect a fee of $100 for each application submitted by an alien for permanent or temporary residency under the legalization provisions in Title II. CBO estimates that 1.8 million aliens would apply for legal temporary residency--0.6 million in 1987 and 1.2 million in 1988. In 1988 through 1990, the 1.4 million aliens granted temporary residency would apply for permanent residency. The special agricultural workers would also apply for legalization during 1987 and 1988: an estimated 0.1 million in 1987 and 0.2 million in 1988. With a fee of $100 per application, CBO estimates that the government would receive a total of $344 million over the four years from legalization application fees.

Estimated Budget Impact -- Special Agricultural Workers
(Functions 500, 550, 600, and 650)

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
AFDC (Function 600)					
Required Budget Authority	*	6	25	35	36
Estimated Outlays	*	6	25	35	36
SSI (Function 600)					
Required Budget Authority	*	*	16	20	23
Estimated Outlays	*	*	16	20	23
Food Stamps (Function 600)					
Estimated Authorization Level	*	5	23	32	33
Estimated Outlays	*	5	23	32	33
Unemployment Compensation (Function 600)					
Required Budget Authority	---	---	---	---	---
Estimated Outlays	5	39	59	61	61
Disability Insurance (Function 650)					
Required Budget Authority	---	---	---	---	---
Estimated Outlays	*	*	*	*	1
Medicaid (Function 550)					
Required Budget Authority	*	5	35	50	53
Estimated Outlays	*	5	35	50	53
Reimbursement of State Public Assistance Costs (Function 600)					
Estimated Authorization Level	*	12	59	84	88
Estimated Outlays	*	12	59	84	88
Agricultural Worker Commission (Function 300)					
Estimated Authorization Level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2
Subtotal: Direct Spending Provisions					
Required Budget Authority	*	11	76	105	112
Estimated Outlays	5	50	135	166	174
Subtotal: Amounts Subject to Appropriation Action					
Estimated Authorization Level	2	19	84	118	123
Estimated Outlays	2	19	84	118	123
TOTAL					
Estimated Authorization Level/ Required Budget Authority	*	30	160	222	235
Estimated Outlays	5	69	219	284	297

* Less than $0.5 million.

In addition, the bill allows the Secretary of Labor to impose a fee on employers importing temporary agricultural workers to recover the costs of processing applications for certification. It has not yet been determined whether the Secretary of Labor would impose such a fee and CBO is unable at this time to estimate how much money would be collected as a result of this fee. Also, the bill permanently exempts employers from paying Federal Unemployment Tax Act taxes on wages paid to H-2 agricultural workers. This provision has a negligible revenue effect.

Part B of Title I increases penalties for immigration-related violations and Part A outlines employer penalties for illegal employment of unauthorized aliens. No estimate can be made of the fines that would be collected by the federal government as a result of these sections.

In addition to the above effects on federal revenues, there are potential effects on individual income tax revenues and social insurance contributions. Revenues would increase if some of the aliens who are not having taxes withheld from their wages at present were to have taxes withheld as a result of this legislation. Revenues would decrease if aliens who currently have taxes withheld and are entitled to refunds that they do not claim would claim refunds as a result of this bill. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on these revenue sources.

Estimated Revenue Effect

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
Revenues from Application Fees	70	166	54	54	---

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

By legalizing certain unauthorized aliens currently residing in the United States, this bill could have sizable effects on state and local government budgets. Unauthorized aliens are not eligible for welfare programs that are partially- or fully-funded by states and localities. When legalized, these aliens would be eligible for such programs--immediately in the case of state programs and after five years in the case of programs financed by federal and state governments jointly. The special agricultural workers would be eligible for federal and state programs immediately. During the estimation period, however, states and localities would have no added costs under CBO's assumptions. They would, in fact, experience budgetary savings to the extent funds were appropriated to cover their public assistance, education, and imprisonment costs, as authorized in the bill. After 1991, however, when the public assistance and education reimbursements were no longer available, states and localities would experience increased costs.

As shown in the table, public assistance costs would be zero to the extent the authorized reimbursements covered them in full, as CBO has assumed. The full amounts of any reimbursements for education services are estimated to result in state and local savings. States were required to educate illegal alien children by the Supreme Court in Plyler vs. Doe (June 15, 1982). Finally, any reimbursements for costs of incarcerating illegal aliens currently borne by states and localities would also result in budgetary savings.

(by fiscal year, in millions of dollars)

	1987	1988	1989	1990	1991
Public Assistance	---	---	---	---	---
Education Assistance	-1	-63	-423	-653	-712
Assistance for Imprisonment Costs	-70	-90	-95	-100	-105
Total Estimated State and Local Outlays	-71	-153	-518	-753	-817

A number of factors make these estimates uncertain. For purposes of this estimate, it is assumed that funds for reimbursements to states would be appropriated in full. If less than this amount were appropriated, states and localities would have lower savings or even experience budgetary costs. On the other hand, with a full appropriation, savings to states and localities would be higher than CBO has estimated. Certain current expenditures by states and localities would be covered under the grant: free health care provided to unauthorized aliens in public hospitals, assistance to Cuban and Haitian entrants, and any public assistance being received illegally by unauthorized aliens. However, CBO does not have sufficient information to estimate these potential savings.

In addition, other titles of the bill could affect state and local budgets. If the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the United States are effective, there would be some associated savings to state and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the United States and the potential effectiveness of the bill's sanction provisions.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

On August 20, 1985, CBO prepared a cost estimate for S. 1200, the Immigration Reform and Control Act of 1985, as ordered reported by the Senate Committee on the Judiciary, July 30, 1985. The estimated budget impact of S. 1200 is shown below:

(by fiscal year, in million of dollars)

	1986	1987	1988	1989	1990
Estimated Net Increase or Decrease (-) in the Deficit	-25	99	126	341	328

S. 1200 authorized total appropriations for the INS of $840 million in 1987 and $830 million in 1988. CBO's estimate of the impact of that authorization was the increase over the existing baseline funding level for INS. The Senate bill did not authorize appropriations for the Executive Office of Immigration Review.

The legalization provisions of H.R. 3810 and S. 1200 also differ significantly. First, in H.R. 3810, unauthorized aliens qualify for residence status if they arrived in the United States before January 1, 1982. In S. 1200, they qualify if they arrived before January 1, 1980. Consequently, the House bill would make more aliens eligible for resident status--1.4 million versus 0.6 million--and would result in higher outlays for state assistance and federally-funded income security and health programs. The House bill also legalizes unauthorized aliens who worked in agriculture between May 1, 1985 and May 1, 1986, adding another 0.25 million aliens who would receive federal program benefits immediately. Second, S. 1200 provides no education assistance to states. Third, S. 1200 precludes receipt of federal program benefits based on "financial need" for six years, instead of H.R. 3810's five years, and does not except the aged and disabled or children, pregnant women, and medical emergencies from the prohibition on receipt of federal benefits. Fourth, S. 1200 authorizes a capped entitlement for payments to states of $300 million a year for the first two years and $600 million a year for the next four years, beginning with the year in which the application period ends, compared to authorization of full reimbursement for five years in H.R. 3810. Finally, S. 1200 slows the legalization process by an estimated two years by requiring a Legalization Commission to find that more effective enforcement measures had been instituted with adequate resources to curtail the entry and stay of unauthorized aliens before legalization could proceed.

9. ESTIMATE PREPARED BY:

Janice Peskin (226-2820), Marjorie Miller (226-2860), Linda Radey (226-2720), Paul Cullinan, Lynne Davidson, Julia Isaacs, and Anne Manley (226-2820).

10. ESTIMATE APPROVED BY:

James L. Blum
Assistant Director
for Budget Analysis

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Director

October 15, 1985

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human
Resources
United States Senate
428 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 1570, the Fair Labor Standards Public Employee Overtime Compensation Act, as ordered reported by the Senate Committee on Labor and Human Resources, October 9, 1985. We estimate that this bill would have no cost to the federal government, and would result in significant savings for state and local governments.

S. 1570 would amend the Fair Labor Standards Act (FLSA) as it now applies to nonfederal units of government. The bill would allow states and localities to grant employees one and one-half hours of compensatory time off for every hour of overtime worked, in lieu of paying cash premiums for overtime, but would require that employees receive cash compensation for overtime after accumulating 480 hours of compensatory time. Jurisdictions that maintain collective bargaining relationships would be allowed to preserve contract provisions that provide compensatory time for overtime. Public employees would be allowed to use accrued compensatory time within a reasonable amount of time.

S. 1570 would further amend the FLSA to exclude from the calculation of overtime occasional part-time or volunteer work by public employees for different agencies within the same jurisdiction or for a different jurisdiction. Persons working for nonfederal units of government on a voluntary basis and all persons employed by state and local legislative bodies, except employees subject to civil service laws and library personnel, would be exempt from coverage under the FLSA.

Finally, S. 1570 would set April 15, 1986 as the compliance date for applying the FLSA to state and local employees and would allow public employers to delay payments for overtime until August 1, 1986. Any FLSA liability that may exist prior to April 15, 1986 would be eliminated.

CBO estimates that no cost to the federal government would result from enactment of this legislation, because it would not significantly affect the amount of Department of Labor activity in enforcing the FLSA. CBO

estimates, however, that S. 1570 would significantly reduce the budget impact of extending the FLSA to state and local governments, as would be required under the recent Supreme Court decision in the case of Garcia v. San Antonio Metropolitan Transit Authority (105 S. Ct. 1005, 1985).

CBO has not completed its study of the potential impact of the Garcia decision on state and local government budgets. Our preliminary analysis, based on information from over 30 states, communities, and concerned organizations, indicates that full application of the FLSA wage and overtime provisions as required by that decision would result in initial annual compliance costs totalling between $0.5 billion and $1.5 billion nationwide. Such costs would result from compliance with the overtime payment standards and would decrease in subsequent years as public employers renegotiate union contracts and adjust work schedules. This estimate does not include one-time costs that would be incurred to pay for compensatory time accrued after February 15, 1985.

We estimate that the bill would save most of these compliance costs, by delaying compliance with the FLSA standards until April 1986, eliminating retroactive liability, and restoring the option of using compensatory time off rather than cash payments for overtime. The costs associated with the Garcia decision and the savings resulting from this bill are difficult to estimate with precision because of the scarcity of information regarding a number of key factors. For example, the savings depend greatly on the extent to which public employers are already complying with FLSA standards, and on the extent to which states or communities that are not yet complying might change certain management and scheduling practices in order to reduce overtime hours. However, detailed data on the number of employees who would be affected, the number of overtime hours worked by affected employees, the number of public employees already paid premium wages for overtime, and the extent to which state and local governments could find ways to adjust work patterns and wages to avoid incurring additional personnel costs are not available on a comprehensive and reliable basis. In addition, the budgetary cost of compensatory time is uncertain, because it would depend on the extent to which government agencies would need to replace employees to maintain a full staffing level. This factor and other personnel and compensation practices vary sharply from community to community, making it difficult to reliably estimate nationwide costs.

We are continuing to collect information on this subject, and will be pleased to provide the Committee with further information as it becomes available.

With best wishes,

Sincerely,

Eric Hamilton

for Rudolph G. Penner
Director

cc: Honorable Edward M. Kennedy
Ranking Minority Member